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Via U.S. Mail and E-Mail ([Tames.pam@epa.gov](mailto:Tames.pam@epa.gov))

Pamela Tames, P.E.  
Remedial Project Manager  
Central New York Remediation Section  
U.S. Environmental Protection Agency  
290 Broadway, 20th Floor  
New York, New York 10007-1866

RE: July, 2014 Proposed Plan for the Lower Ley Creek Sub-Site of the  
Onondaga Lake Superfund Site, Town of Salina, Onondaga County,  
New York

Onondaga County, NY Comments on the Proposed Plan

Dear Project Manager Tames:

Onondaga County welcomes the opportunity to comment on the Proposed Plan for the Lower Ley Creek Sub-Site of the Onondaga Lake Superfund Site, Town of Salina, Onondaga County, New York.

To do so, the County submits it is necessary to place the County's comments in the full context of the history of the subsite, as designated, and the site as a whole.

I. Overall Site History

It is known and recognized by USEPA and the New York State Department of Environmental Conservation (NYSDEC) that General Motors Corporation (GM) was unquestionably the largest source of contaminants found in Ley Creek.

On August 12, 1985 GM executed a consent order with NYSDEC (Case #7-0383) intended to both (a) address the on-going discharge to Ley Creek of waste waters from GM's Salina, NY facility that the order described as contaminated with, among other pollutants, two types of PCB, Aroclor 1242 and Aroclor 1248, and (b) limit any such future discharges.

An evaluation of the extent of the resulting PCB contamination in and about Ley Creek was inexplicably delayed until 1997 when a subsequent order was entered between NYSDEC and GM. The 1997 order stated that the PCB contamination of Ley Creek dredge spoils was "the result of discharges of contaminated wastewater

primarily from operations of” GM’s Salina facility and determined it was necessary to “undertake additional investigation in Ley Creek sediments and surface water” downstream of the GM facility.

After 10 additional years passed, in 2007, NYSDEC stated it had “confirmed” GM’s discharge of PCBs to Ley Creek and determined that the GM facility was a subsite of the Onondaga Lake NPL site.

Ultimately, NYSDEC and EPA jointly notified GM of their determination that the GM facility in Salina was a subsite of the Onondaga Lake NPL site, and subsequent investigations of Ley Creek confirmed the presence of PCB-contaminated surface water and sediment in Ley Creek downstream of the GM facility and corroborated the prior findings that GM was a source of PCBs to the creek and the lake.

Thereafter, the United States arbitrarily divided Ley Creek into two sites: upper Ley Creek, upstream of the Route 11 bridge, and lower Ley Creek, downstream of the Route 11 bridge. It did so despite having determined that the GM site was a subsite of the Onondaga Lake superfund site located at the terminus of Ley Creek, the absence of any physical barrier at the Route 11 bridge that would preclude the transport of GM waste beyond the Route 11 bridge, and an existing NYSDEC Order that, the County submits, required GM to investigate the length of Ley Creek. Unfortunately, that decision artificially limited GM’s legal and financial responsibility to pay its proportionate share of the cost of remediation for the entirety of Ley Creek, including “Old Ley Creek.”

As a result of the arbitrary and artificial creation of the Lower Ley Creek subsite, the full \$32.8 million cost of response for the environmental contamination at the former GM Salina facility, upper Ley Creek, and the PCB dredging site was allocated to the RACER environmental response trust. With respect to lower Ley Creek, USEPA secured an allowed claim against the GM bankruptcy estate of \$38.3 million claim. From that claim EPA realized and has available approximately \$22 million to fund lower Ley Creek response costs. The estimated cost to implement the Proposed Plan is \$18 to \$35.5 million.

## II. The Proposed Plan

### A. General Concerns with the RI/FS and Proposed Plan

Onondaga County appreciates the extension of time that was granted to provide comments on the Proposed Plan, particularly because the County was troubled by the lack of notice that USEPA provided with respect to the availability of the Remedial Investigation and Feasibility Study reports. Despite on-going communications between the County and USEPA concerning this matter and repeated prior requests for the RI/FS reports, their availability was never disclosed to Onondaga County until the release of the Proposed Plan.

Regarding the Proposed Plan itself, Onondaga County submits it suffers from a number of critical deficiencies, as follows:

- It is based on a Remedial Investigation Report and Feasibility Study that grossly misstate the history of the Site;
- It is based on an investigation that failed to adequately investigate and quantify the extent of contamination; and
- Given the above deficiencies, the projected cost options are based on poorly defined remedial endpoints and insufficient field data and thus, the Proposed Plan comparison of remedies and the related cost estimates are of limited utility.

Despite the overall passage of time and effort, the history of this site suggests the publication of a Proposed Plan at this time is premature. The latest evidence that raises that concern for the County is the lack of any apparent plan by USEPA and NYSDEC to fully and comprehensively coordinate the review and assessment of potential local disposal options, including coordination between the upper and lower Ley Creek remediation processes.

At the USEPA public hearing on July 29, 2014, Mr. Singerman of the USEPA suggested there was no need to be concerned about the coordination of the upper and lower Ley Creek investigations and remedies as eventually the two would catch-up and could possibly retain a single contractor who would properly coordinate the two separately determined remedies. Mr. Singerman also suggested that selecting a remedy for Lower Ley Creek today would allow USEPA and the potentially responsible parties to negotiate issues related to the implementation of the selected plan.

Onondaga County rejects both of the above contentions. First, as the history above establishes, the upper and lower Ley Creek boundary is an artificial and arbitrary construct that never should have occurred. Now is the time to correct that critical error and address the two as a single site, either with a single lead agency or better transparent and public coordination.

For example, earlier this year the PCB-contaminated holding pond on the RACER Trust property overflowed and flooded into Ley Creek. Where did those contaminants go and how are those events being factored into the selection and implementation of a proposed remedy for both upper and lower Ley Creek?

Second, the level of uncertainty as to waste volumes, remedy endpoints and projected costs will hinder cooperation and negotiation between the parties whereas a more robust and defensible RI/FS process would assist to foster cooperation. As presented, the Proposed Plan is likely to make any settlement more difficult and more contentious. In that regard, Onondaga County submits the potential shortfalls in funding are, at least in part, the responsibility of the regulators, while at the same time the RACER Trust may also be a potentially responsible party.

## 1. The Site History and Site Investigation

The underlying investigation of what has arbitrarily and artificially been identified as “Lower Ley Creek,” both from an historical use and human management perspective, is, as reported in the June, 2013 Lower Ley Creek Remedial Investigation Report and the March 14, 2014 Lower Ley Creek Feasibility Study, so replete with errors that the validity of both reports must be called into question.<sup>1</sup>

## 2. Technical RI/FS Issues

The County understands that the statistical method used to determine data adequacy was based on an approach for determining “hotspots” using preexisting soil and sediment data, but with no apparent knowledge of historic practices that actually caused contaminant distribution patterns. One example of the deficiency of this statistical approach is the existence of one or more soil sampling locations at which contaminant concentrations are above action levels but there was no additional sampling done to confirm the extent of contamination.

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<sup>1</sup> For example, page 2-6 of the March 14, 2014 Lower Ley Creek Feasibility Study erroneously states:

During the early 1970s, in an effort to limit flooding in the area, the U.S. Army Corps of Engineers (USACE) re-routed Ley Creek through the landfill area (NYSDEC, 2009a).

If, on the other hand, that statement is correct the U.S. Army Corps of Engineers must be named a potentially responsible party.

Second, the June, 2013 Lower Ley Creek Remedial Investigation Report contradicts the Feasibility Study and is replete with errors of irrelevance, inaccurate dates, misnamed parties and misstated reasons for the regular flooding of Ley Creek, for example:

The development of railroads and the Erie Canal System allowed industry and settlement to quickly grow in Eastern Syracuse, New York.

\* \* \*

Prior to the early 1970s, poor channel conditions and large impermeable areas in the watershed caused extensive flooding of Ley Creek.

\* \* \*

Dredging of Ley Creek was performed by the Onondaga County Department of Drainage and Sanitation. In 1970, the section of the creek between the 7<sup>th</sup> North Street Bridge and Route 11 was dredged. In 1971, portions of Ley Creek between the 7<sup>th</sup> North Street Bridge and Onondaga Lake were dredged. In 1975, Ley Creek was dredged from Townline Road (approximately 1.5 miles north of the Site) to Onondaga Lake. In 1983, a section of Ley Creek north of the Site (Townline Road to Route 11) was dredged.

An example of the uncertainty that has resulted from the RI/FS is the extent of contamination to be removed. The approved RI estimates the volume of the contaminated sediment to be 110,000 cubic yards while the FS and Proposed Plan estimates the volume as 73,000 cubic yards, a difference of 50%. What is the basis for that material difference in volume estimates?

Also, the County is concerned that the \$5/ton cost estimate for the local disposal option is overly optimistic. Please provide the back-up and support for this cost estimate.

### III. Specific Comments and Concerns

Notwithstanding the above generic concerns with the Proposed Plan and the County contends, a need for further investigation and quantification of site conditions, Onondaga County submits the following significant issues must be considered and addressed prior to USEPA issuing a record of decision for this site, including any potential need to modify the scope of the remedy so as to be fully protective of human health and the environment.

#### A. The Local Disposal Option

Onondaga County has participated in an on-going dialogue concerning possible local disposal options between and among USEPA and NYSDEC and alleged potentially responsible parties and other interested parties. The County is not opposed to the use of a viable local disposal option, but as has been stated in the on-going dialogue, the County continues to seek a full and complete understanding of the issues and concerns that are raised by the local disposal option and the trade-offs that may exist between a local and non-local disposal option.

Given the above, the County has the following questions and concerns:

1. Has any potential local option been eliminated from consideration?
2. Are there any flood control, flood mitigation or flooding impacts that present a potential impediment to either local disposal option?
3. Is leachate management a potential impediment to either local disposal option?
4. Is the viability of a local disposal option dependent upon legal (e.g., federal or state statutory, regulatory or policy issues), engineering (e.g., location, volume, compatibility, constructability) and/or cost issues?
5. When does USEPA expect a determination will be made as to whether there is one or more viable local disposal options?

## B. Flood Control and Infrastructure

Ley Creek and its branches have a history of flooding, including major floods in March, 1950, 1960 and 1964; May, 1969; June, 1972; July, 1974; and September, 1976. See e.g. attached Plate 1 from *Flood of June 1972: Onondaga Lake and Ley Creek at Syracuse, New York 1972*, Shindel, H. L. USGS Open-File Report: 72-346. See <http://pubs.er.usgs.gov/publication/ofr72346>

More recently, the town of DeWitt, which is upstream of the Town of Salina, has been beset with flooding from Ley Creek. Before the year 2000, DeWitt reportedly never received more than four inches of rain in a 24-hour period. Since 2000, the town has had rainfalls totaling more than four inches five or six times in a 24-hour period. The creek flows through the northern neighborhoods of the town, and as explained by the Town Supervisor, "Ley Creek is very flat – it's not your typical watershed ... because it's very flat, a lot of water tends to flood." See <http://www.eaglebulletin.com/news/2014/may/07/dewitt-encouraging-residents-save-rain-rain-barrel/>

The flooding risk that Ley Creek presents and the need to manage the Creek are highlighted in the FEMA Flood Insurance Study for Onondaga County. Attachment A contains excerpts from the Flood Insurance Study. See [https://www.rampp-team.com/county\\_maps/new\\_york/onondaga/36067CV001A\\_voll.pdf](https://www.rampp-team.com/county_maps/new_york/onondaga/36067CV001A_voll.pdf). In addition, the Town of Salina Hazard Mitigation Plan highlights the risk of future flooding and the need for on-going channel inspection, debris removal and maintenance. See <http://www.ongov.net/planning/haz/documents/Section9.28-TownofSalina.pdf>

The Feasibility Study and the Proposed Plan both identified a natural gas pipeline and an oil pipeline on the north side of Ley Creek, as well as the Route 11 bridge, as infrastructure that must be accounted for in the implementation of any remedy and which may require that contaminated sediment or soils remain in place and be capped to prevent human or environmental exposure.

Neither the FS nor the Proposed Plan discussed other existing infrastructure such as Onondaga County trunk sewers, force mains and related infrastructure that must be maintained, repaired and upgraded from time to time. The County is concerned that this project -- either as proposed or ultimately, as implemented -- may create very challenging conditions (i.e., financial, construction and legal) that will restrict, limit or impede future access to County infrastructure. Attachment B is a map depicting the relevant infrastructure. It is critical that the force main remain accessible for purposes of inspection, maintenance, repair, upgrading or other necessary improvement projects.

Regarding infrastructure, the following excerpts are from pages 14 and 20 of the Proposed Plan:

In order to protect the structural integrity of the Route 11 bridge, it may not be possible to remove all of the

contaminated sediment at the base of the bridge. Therefore, some combination of dredging and capping of sediments under the bridge may be necessary in order to protect the bridge and not reduce the effective cross section of flow for flood protection.

\* \* \*

In addition, the excavation of the southern bank soils in Alternative S-2 would not be backfilled to grade. Reducing the elevation of this area would increase the flood storage capacity of this floodplain. The extent of backfilling in this area would be determined during the design phase based on the consideration of various factors, including flooding potential and desired habitat conditions.

A detailed hydrologic analysis would be performed during the design phase to determine the effect of the remedy on stream flow, flooding and dynamics, and to identify the appropriate materials and bathymetry for restoration and long-term sustainability.

While the above excerpts indicate some consideration has been given to the above issues, the County has the following concerns and questions:

- As the remedial development process proceeds, how will the Proposed Plan address the potential impacts on the Bear Trap-Ley Creek Drainage District and the 42 inch diameter wastewater conveyance pipeline?

The final design needs to confirm whether the remedy will impact this facility, and if so, incorporate provisions to allow for future utility maintenance and the increased cost of any such work in locations where contaminants remain.

- The maintenance of existing utilities and the future need to inspect, maintain and improve existing utility infrastructure is significantly impacted by the existence of remaining contaminants. The Remedial Investigation Report appears to have data gaps when it comes to defining the actual need for and volume of soil and sediment to be removed and neither the Proposed Plan nor the FS discuss in any detail what steps and processes will be implemented to fully identify and secure the removal of contaminated materials (e.g., confirmatory sampling, etc.). What is the degree of certainty as to the volume of soil and sediment that must be removed? How does that degree of certainty reflect the estimated volumes and costs of the proposed soil and sediment removals? What processes will be used in the field to establish the removal of all soil or sediment that is proposed to be removed has, in fact, been removed?
- The Ley Creek channel is very flat and has little fall from the upper drainage areas to the mouth of Onondaga Lake and is impacted

significantly by the relative elevation of Onondaga Lake. How will the Proposed Plan assure that property owners and residents with properties that abut or are near the Creek are protected from flooding and the environment is protected from the mobilization of pollutants during implementation of the remedy, especially given the proposal to dredge in the wet?

- Did the Feasibility Study of the Proposed Plan investigate the cost to divert or channel the Creek to eliminate the need to dredge in the wet? If not, why not? If yes, what were the estimated costs and why was that option not included in the Feasibility Study of the Proposed Plan?
- As the design and implementation of the proposed and/or selected remedies proceed what effort will the Agency make to assure that future flood mitigation meets or exceeds the current channel capacity? What steps will be taken to coordinate the design and plan with FEMA, local municipalities, utilities, residents, etc.?
- What opportunities does the USEPA envision to expand the floodway to offer greater flood protection as either a necessary aspect of the proposed remedy or an added/modified design feature (e.g., less capping material)?
- How will proposed institutional controls impact the Ley Creek Drainage District? What restrictions or limitations will be placed on the properties that are incorporated into the district by virtue of their proximity to Ley Creek? For example, will the institutional restrictions preclude further upgrades to, or installation of, additional drainage and/or wastewater facilities? And how will those controls be supervised and managed post-remedy implementation?

#### C. Additional Issues and Concerns

1. To what extent, if any, do the Proposed Plans differ from the discussion and detail set out in the Feasibility Study (e.g., the options discussed in the FS do not correspond to the designations assigned to the options identified in the Proposed Plan)?
2. The County submits the selection of a remedy for lower Ley Creek should await the outcome of the remedy selection process for upper Ley Creek or at a minimum the disclosure by NYSDEC of the Proposed Plan for Upper Ley Creek. As noted above, in reality, there should be a single RI/FS and remedy selection process for the entire Creek. Indeed, the County submits the reality that work is being done by USEPA and the RACER Trust with oversight by NYSDEC is not a valid basis for the work to proceed on separate and marginally integrated tracks.

3. What steps are and will be taken to coordinate the implementation of the upper and lower Ley Creek remedies?
4. What steps will be taken to insure that the upper Ley Creek remedy does not increase the cost of implementing the lower Ley Creek remedy?
5. Does the Proposed Plan comply with the New York State standard for maximum PCBs (and all other detected contaminants) in sediment? Will the standard applied to any upper Ley Creek sediment removal be as strict as the standard proposed for lower Ley Creek?
6. What is the anticipated cost to dewater sediment proposed to be excavated? What method and location of disposal did the Proposed Plan assume for sludge dewatering wastewaters?
7. As USEPA may be aware, the Onondaga County Sanitary District generally will not accept leachate from a Class 2 New York hazardous waste site absent a compelling public need, and only if the resulting discharges meet all applicable legal requirements.

With this in mind, assuming that the contemplated remedy includes discharge of leachate to the METRO WWTP:

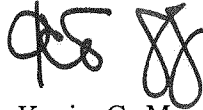
- a. What is the potential volume of leachate or contaminated water that is likely to be pumped to METRO?
  - b. Will pretreatment of this leachate be necessary?
  - c. What provisions will be made to cease pumping during periods of wet weather and/or peak periods of I&I?
8. If leachate cannot be disposed of at the METRO WWTP, what other disposal options exist? What is the cost of those alternative disposal options?
  9. Page 14 of the Proposed Plan states: "While long-term monitoring of the sediment would not be required because all the contaminated sediment would be excavated, fish monitoring would be conducted to determine the remaining levels of contamination in the fish and the rate of decline." Given that fish in the Creek likely migrate into and from Onondaga Lake, is it anticipated that any additional or supplemental remedy will be required and/or based on future fish monitoring data?

10. The site history as detailed in the Proposed Plan, the FS and the Revised RI are rife with factual errors too numerous to detail in commenting on the July, 2014 Proposed Plan for Lower Ley Creek. The provision of these comments does not indicate the County's acceptance or agreement with any such recitations. Neither does this letter constitute an admission by the County or agreement by the County with any of the alleged facts set out in the RI, the FS and the Proposed Plan. By making these comments the County does not waive any defenses and/or claims it may have with respect to any issue related to or concerning the Site, Ley Creek and/or Onondaga Lake and its environs.

11. The comments concerning Murphy's Island are not material to the Proposed Plan. They should be stricken.

Should you have any questions or comments or require further clarification or information concerning the above comments please do not hesitate to contact David Coburn the Director of the Onondaga County Office of Environment at [DavidCoburn@ongov.net](mailto:DavidCoburn@ongov.net) or the undersigned.

Very truly yours  
THE WLADIS LAW FIRM, P.C.

A handwritten signature in black ink, appearing to be 'KS' followed by a stylized flourish.

Kevin C. Murphy

KCM/cm  
Enclosure

Cc: Luis A. Mendez, Esq.  
David Coburn

## ATTACHMENT A

Flood Insurance Study, vol. 1 of 2, ONONDAGA COUNTY,  
NEW YORK (ALL JURISDICTIONS), Federal Emergency Management Agency  
FLOOD INSURANCE STUDY NUMBER 36067CV001A

### At page 14, Town of Dewitt:

In the Town of DeWitt, problems on the two major flooding sources, Ley Creek and Butternut Creek, occur primarily in the Erie-Ontario lowland portion of the town.

The channels of the North Branch Ley Creek and South Branch Ley Creek convey runoff to their confluence. At this point, the creek slope is generally insufficient to carry the flow within its channels, and the nearby area becomes flooded. The situation occurs during the annual spring snow-melt runoff, and on frequent occasions following long-duration rainstorms.

### At page 19, Town of Salina:

In the Town of Salina, flooding problems occur along the floodplains of Bloody Brook, Ley Creek and Bear Trap Creek. Low-lying areas adjacent to Onondaga Lake are flooded whenever a rise in the water level of the lake occurs. Flooding in the lower portion of Ley Creek occurs due to a reduction in the channel slope downstream of the confluence of the north and south branches. Flooding is the most common in the spring when snowmelt runoff occurs, following long duration rainstorms, and is further aggravated by frozen or previously saturated soil. During the spring snowmelt, widespread flooding and damages occurred in March 1950, March 1960 and March 1964. Flooding, which was the result of a rainstorm in May 1966 had an estimated 6-year recurrence interval and resulted in over \$90,000 in damages. The flood of record occurred in June 1972 during Tropical Storm Agnes and resulted in widespread damages. The flood had a recorded discharge of 17,200 cfs at *gaging* (sic) station No. 4-22375, in Baldwinsville. The flood had an estimated recurrence interval of 20 years on the Seneca River.

### At pages 20-2, City of Syracuse:

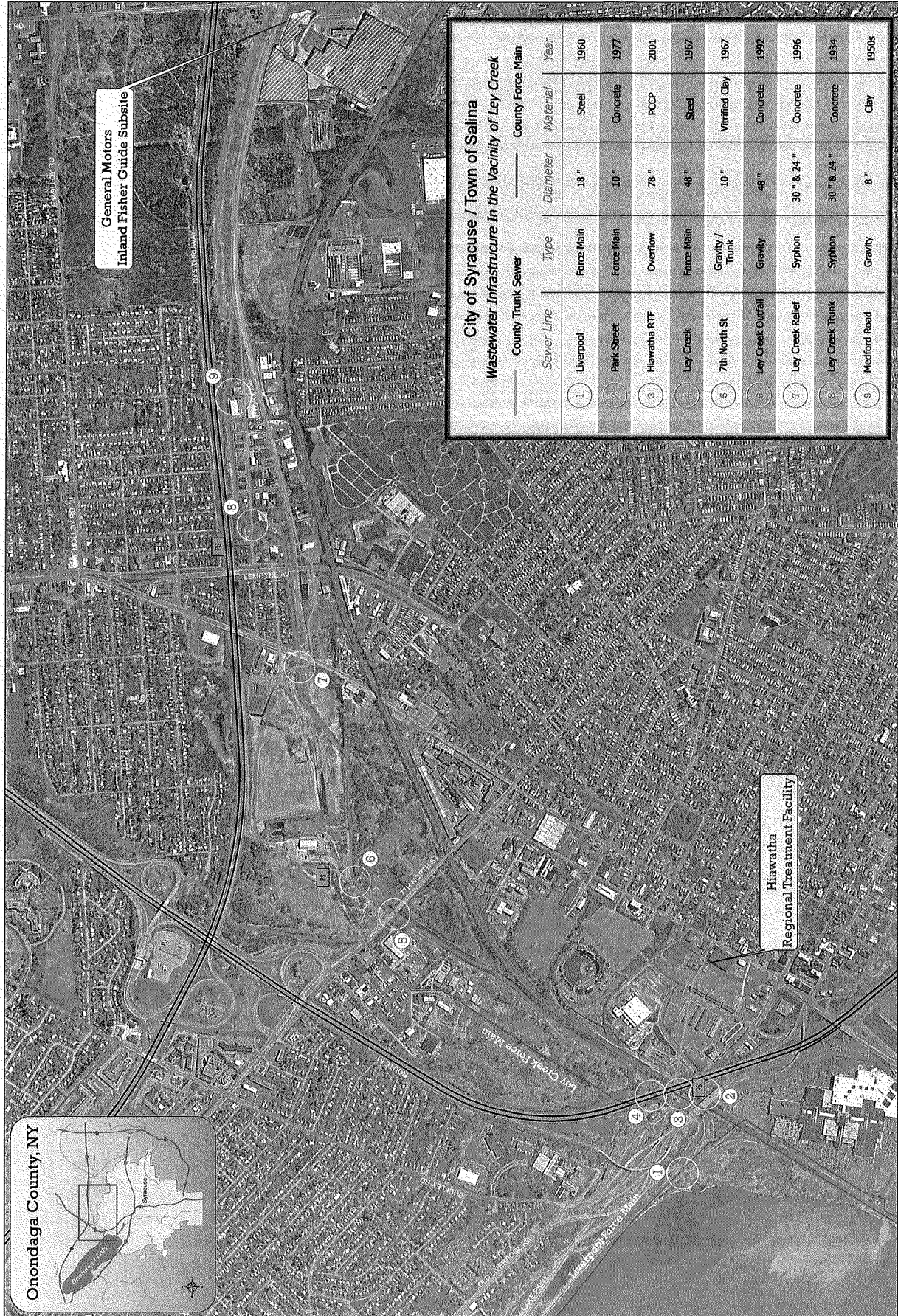
The principal flooding sources in the city are Harbor Brook, Meadow Brook, Ley Creek and Onondaga Lake. Heavy rains, especially those occurring in the spring which combined with snowmelt, have frequently caused high water and local flooding. Some of the more frequent flooding occurs in the area north of Rowland Street and west of Geddes Street, caused by Harbor Brook, and the areas west of MacArthur Stadium and southwest of the Seventh Street bridge, both caused by Ley Creek.

ATTACHMENT B

ONONDAGA COUNTY WASTEWATER INFRASTRUCTURE  
SEWERS AND FORCE MAINS IN PROXIMITY TO LEY CREEK



# ONONDAGA COUNTY WASTEWATER INFRASTRUCTURE SEWERS AND FORCE MAINS IN PROXIMITY TO LEY CREEK



City of Syracuse / Town of Salina Wastewater Infrastructure In the Vicinity of Ley Creek				
County Trunk Sewer		County Force Main		
Sewer Line	Type	Diameter	Material	Year
1 Liverpool	Force Main	18"	Steel	1960
2 Park Street	Force Main	10"	Concrete	1977
3 Hiawatha RTF	Overflow	78"	PCCP	2001
4 Ley Creek	Force Main	48"	Steel	1967
5 7th North St	Gravity / Trunk	10"	Vitrified Clay	1967
6 Ley Creek Outfall	Gravity	48"	Concrete	1992
7 Ley Creek Relief	Syphon	30" & 24"	Concrete	1996
8 Ley Creek Trunk	Syphon	30" & 24"	Concrete	1934
9 Medford Road	Gravity	8"	Clay	1950s

THIS MAP IS INTENDED FOR GENERAL PLANNING PURPOSES ONLY.